

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Mark S. Frost, Petitioner-Appellant, v. Black Hawk County Board of Review, Respondent-Appellee.	ORDER Docket No. 11-07-1558 Parcel No. 8913-21-429-038
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On September 27, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Mark S. Frost submitted evidence in support of his petition and was represented by Fred Mieke, Jr., of Iowa Realty Commercial in Waterloo. Assistant County Attorney David J. Mason represented the Board of Review. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Mark S. Frost appeals from the Black Hawk County Board of Review decision reassessing his property located at 706 Ansborough Avenue, Waterloo, Iowa. According to the property record card, the subject property consists of a one-story, 5724 square-foot retail building built in 1994. The building is in normal condition with a construction grade of 4+10 (average quality), and has 26% physical depreciation. The site is 0.414 acres and is improved with 8100 square feet of concrete paving.

The real estate was classified commercial on the January 1, 2011, assessment and valued at \$358,310, representing \$54,130 in land value and \$304,180 in improvement value.

Frost protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2) and sought an assessment of \$243,270, representing \$36,084 in land value and \$207,186 in improvement value. The Board of Review granted the protest, in part, by applying a 10% downward adjustment to the building for other obsolescence. The total assessment was reduced to \$329,480, representing \$54,130 in land value and \$275,350 in improvement value.

Fred Mieke testified on behalf of Frost. He stated the subject property is a retail carpet store in an area of mixed commercial and industrial use properties. He estimates the building is 50% retail use and 50% warehouse use. The property is also in good condition, and has good visibility and access. He is convinced the subject property is not worth its assessed value.

Mieke prepared a market analysis of the subject property. He used four sales of retail, office, and warehouse properties as comparables. The sales occurred between December 2008 and April 2011, were all located in Waterloo, are zoned C-2, and range in size from 3200 to 10,208 square feet. The sales prices ranged from \$156,500 to \$240,000, or \$15.33 per square foot to \$49.38 per square foot. Mieke did not adjust these sales in the analysis in the record. During testimony, he indicated he made adjustment for location, age/condition, and size based on his experience in the local real estate market and other non-sale listings.

Mieke testified he adjusted Sale 1 upward for condition (to \$30), age (20%), and location (10%) to make it comparable to the subject property. This property was vacant at the time of sale and was listed for several years, but Mieke does not believe there was any financial hardship related to the sale. Applying these calculations, resulted in an adjusted sale price of \$40 per square foot for Sale 1.

He adjusted Sale 2 upward for age (10%) and location (10%) to arrive at an adjusted sale price of \$45 per square foot. This property was used for retail sale and storage of medical equipment and supplies, as well as offices.

Miehe adjusted Sale 3 downward for size (10%) to result in a \$45 per square foot value. This property had a prior retail use, and its current use was for offices and warehouse.

Sale 4 was adjusted upward for location (10%) to an adjusted sale price of \$39 per square foot. This property is used for offices, testing, and supplies. Miehe's adjustments resulted in an adjusted range of value of \$39 to \$45 per square foot for the subject property. From this range, he concluded \$40 per square foot was appropriate for the subject property. The following chart summarizes Miehe's market analysis.

Sales	Address	Year Built	GBA	Acres	AV	AVPSF	Sale Date	Sales Price	\$SPSF	Adjusted \$SF
	Subject	1994	5724	0.414	\$ 329,480	\$ 57.56				
1	2716 - 2722 Falls	1946-71	10,208	0.530	\$ 214,670	\$ 21.03	04/11	\$ 156,500	\$ 15.33	\$ 40
2	2700 Falls	1957-74	6010	0.610	\$ 219,350	\$ 36.50	09/09	\$ 224,000	\$ 37.27	\$ 45
3	204 Fletcher	1966-68	3200	0.304	\$ 155,430	\$ 48.57	12/08	\$ 158,000	\$ 49.38	\$ 45
4	2213 LaPorte	1977-93	6800	0.673	\$ 227,790	\$ 33.50	09/10	\$ 240,000	\$ 35.29	\$ 39

While Miehe appeared knowledgeable regarding commercial realty, all of his adjustments were based on his professional opinion and were not substantiated with market data. He did not supply support data for his conclusions to either the Board of Review or this Board. Even though the subject property is assessed at a higher rate per-square foot than the adjusted sales prices of the comparable properties on a per-square-foot basis, we are hesitant to rely on substantial adjustments without market data support.

Assessor Tammi McFarland testified on behalf of the Board of Review. She stated the Board of Review applied an adjustment to the subject property because it is a commercial property located in an industrial area. In her opinion, the subject property's location reduces its value. No other adjustments were made in the assessment. McFarland testified that she assessed the property based on its current commercial use. She reported about 1300 square feet of the subject property is used for

retail and 1600 square feet is used for warehouse and offices. McFarland was unable to find any sales comparables and did not comment on the properties Miehle identified.

Reviewing the entire record, we find the preponderance of the evidence fails to prove the subject property is over-assessed.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Frost presented sales comparables for his property, and Miehe testified regarding the adjustments he made to the sales. The adjustments, however, were not located in the analysis Miehe provided. More importantly, no other data substantiated these adjustments. Without this additional supporting data, we are reluctant to rely on Miehe's conclusions. Therefore, we affirm Frost's property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2011, is \$329,480, representing, \$54,130 in land value and \$275,350 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment as determined by the Black Hawk County Board of Review is affirmed.

Dated this 24 day of October 2012.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, Board Member

Richard Stradley
Richard Stradley, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-24</u> , 2012.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>